IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1041 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANSING SADIYABHAI CHAMAR

Versus

STATE OF GUJARAT

Appearance:

MR JM BUDDHBHATTI for Petitioner

MR SP DAVE PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 20/03/2001

ORAL JUDGEMENT

1. The original accused of Sessions Case No. 18/98, which was tried and decided by the learned Additional Sessions Judge, Vadodara Camp Court, at Chhota Udepur, (hereinafter referred to as "the learned Judge of the

Trial Court"), has by filing this Criminal Appeal under Section 374(2) of the Criminal Procedure Code, 1973 (hereinafter for short referred as "Cr.P.C.") challenged the legality and validity of the judgement, Ex. 19 of conviction and sentence rendered by the learned Judge of the Trial Court in the aforesaid case on 21st September, 1999.

2. The facts leading to this present appeal in a nutshell are as under:-

On or about 19th August, 1997 at about 10.30 p.m. in village Khadakvada Taluka : Chhota Udepur, District : Vadodara, the present appellant and one Shankarbhai Sadia (absconding accused) set on fire the house of Narsingh the husband of complainant, as a result of which, Narsinghbhai whose house was burnt, sustained damage to the extent of Rs. 50,000/- to Rs. 60,000/-. As per the case of the prosecution, the complainant and witness Kaliben Nahalabhai came out from the house, immediately after the incident. Both the accused were present near the house, which was set on fire. It is further the case of the prosecution that both the accused gave threats to the complainant and witness Kaliben that, if they would come out of the house, they would be killed. The neighbours came there and extinguished the fire and thereafter, both the accused ran way. Thereafter, the complainant lodged her complaint in Rangpur Police Station at about 11.15 hrs. on 20th August, 1997. That complaint came to be registered as CR. No. I. 83/97. Thereafter, the Investigating Officer conducted the police investigation and ultimately, filed the chargesheet against the present appellant. As per the observations made by the learned Judge of the Trial Court second accused - Shankar Sadia is absconding. The learned J.M.F.C. passed an order under Section 209 Cr. P.C. and committed the case to the Court of Sessions, Vadodara, Camp Court at Chhota Udepur.

3. The Learned Judge of the Trial Court framed the charge at Ex. 5 on 11.8.1998. On recording his plea, the accused has pleaded not guilty to the charge. Thereafter, the prosecution examined five witnesses in support of its case. The prosecution has also produced certain documents with list Ex. 7, out of which, panchnama of scene of offence and panchnama of physical condition of accused were admitted by the accused. They are at Exhs. 13 and 14 respectively. On completion of the evidence, the learned Judge of the trial Court recorded further statement of the accused, wherein, accused denied the entire prosecution case. Thereafter,

after hearing the arguments of the learned advocates for both the parties, the learned Judge of the trial Court came to a conclusion that the offence under Sections 436 and 506 (2) of Indian Penal Code are proved beyond reasonable doubt and he rendered his judgement of conviction. Thereafter, after hearing the the accused on the point of quantum of sentence, he passed the final order of sentence, whereby, the accused has been convicted for the offence punishable under Section 436 of I.P.C. to undergo rigorous imprisonment for five years and fine of Rs. 5000/- and in default, to undergo simple imprisonment for one year and for the offence punishable under Section 506(2) I.P.C., the learned Judge convicted the accused to undergo rigorous imprisonment for one year. The learned Judge of the trial Court also directed to pay Rs. 5000/as compensation to the complainant. As against that judgement, the original appellant has preferred this present appeal.

4. I have heard Mr. J.M. Buddhbhatti, learned advocate for the appellant and Shri S.P. Dave, learned APP for opponent - the State of Gujarat.

5. Shri Buddhbhatti, learned advocate for the appellant has taken me through the evidence led by the prosecution. He also read the impugned judgement. During the course of arguments, firstly, Shri Buddhbhatti, learned advocate for the appellant argued on merits on the factual aspects but later on, he restricted his arguments only for the purpose of quantum of sentence. He has argued that the accused is a poor person and this is his first offence and the sentence imposed by the learned Judge of the trial Court is a harsh one and therefore, there should be reduction in the sentence. As per his arguments, the accused has remained in judicial custody for about 4 years and 4 months. As against this arguments, Shri S.P. Dave, learned APP for the opponent - State has argued that the accused has committed a serious offence of setting the house on fire and damaged the property of a third party, for no reason. He has also drawn my attention to the fact that while committing serious offence, the accused gave threats to the lady witnesses and therefore, no leniency should be shown.

6. Looking to the paper-book, before trial, the accused remained in judicial custody for the period from 22.9.1997 to 13.11.1997 and thereafter, again from 8.6.1998 to 21.9.1998. Thus, he remained in jail for about 5 months and 4 days before trial. On query being made to Shri Buddhbhatti, learned advocate for the

appellant, he has further submitted that the accused is in jail after pronouncement of judgement of sentence and conviction. So, he has remained in jail for about two years and six months. On taking into consideration the entire period right from the arrest of the accused, accused is in jail since last about three years.

7. Looking to the nature and seriousness of the offence and the manner in which the offence was committed, this Court is of the opinion that while imposing sentence, the learned Judge of the trial Court has shown a proper leniency because for the offence punishable under Section 436 of I.P.C., the outer limit of sentence is life imprisonment. Instead of life imprisonment, the learned Judge of the trial Court has imposed sentence of only five years and fine of Rs. 5000/-. Considering the facts and circumstances of the case and rival contentions of both the parties on the point of quantum of sentence, this Court is of the view that sentence imposed by the learned Judge of the trial Court is just and proper. To pass an order of sentence, is a discretionary power. The appellate Court should be slow to interfere with the quantum of sentence.

8. In view of what is stated hereinabove, this appeal is devoid of merits and the same is required to be dismissed. Therefore, the present appeal is dismissed.

(H.H. Mehta, J.)
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